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FM AMEMBASSY HANOI  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4647  
INFO RUEHBK/AMEMBASSY BANGKOK PRIORITY 5416  
RUEHHM/AMCONSUL HO CHI MINH 2573  
RUEHRC/DEPT OF AGRICULTURE USD FAS WASHINGTON DC  
RUCPDO/DEPT OF COMMERCE WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHINGTON DC

UNCLAS SECTION 01 OF 03 HANOI 000308

SIPDIS

SENSITIVE  
SIPDIS

STATE FOR EAP/MLS AND EB/TPP/IPE JBOGER  
STATE ALSO PASS USTR JCHOE-GROVES AND DBISBEE  
STATE ALSO PASS USPTO FOR JURBAN  
STATE ALSO PASS LIBRARY OF CONGRESS FOR TEPP  
AMEMBASSY BANGKOK FOR USPTO JNESS  
USDA FOR FAS/FAA/AO HUETE  
USDOC FOR ITA/MAC/OIPR CPETERS AND 4430/MAC/AP/OPB/VLC/HPPHO

E.O. 12958: N/A

TAGS: [ETRD](#) [ECON](#) [KIPR](#) [VM](#)

SUBJECT: MISSION RECOMMENDS THAT VIETNAM REMAIN ON THE 2007 SPECIAL  
301 WATCH LIST - PART 1 OF 2

REF: (A) STATE 007944 (B) 06 HANOI 000427

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11. (SBU) Summary: The Mission recommends continued placement of Vietnam on the Office of the U.S. Trade Representative's (USTR) Special 301 Watch List for 2007 because intellectual property rights (IPR) enforcement is still weak, and piracy and counterfeiting in many product categories remain pervasive. At the same time, the Government of Vietnam (GVN) continues to take steps to protect IPR, including strengthening its legal regime. Vietnam's January 2007 accession to the World Trade Organization (WTO), continued efforts to integrate into the international economy and goal to improve trade relations further with the United States have motivated the GVN to make fulfillment of its international IPR commitments a priority. With more training, resources, experience and time to implement its newly-passed legislative framework, Vietnam should be positioned to develop a better track record on IPR enforcement. These developments argue against the case for elevating it to the Priority Watch List. The Mission will continue to place IPR issues at the forefront of our bilateral trade discussions on WTO and BTA compliance. End Summary.

IPR Situation in Vietnam - Achievements and Challenges  
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12. (SBU) As part of Vietnam's increased integration into the world economy, including its January 11, 2007 accession to the WTO, the GVN has made progress in providing adequate and effective protection to intellectual property rights and providing market access to U.S. persons who rely on IP protection. Since the Mission's 2006 Special 301 submission (reftel B), Vietnam has: (1) strengthened its IPR regime through issuing implementing regulations for the Law on Intellectual Property; (2) committed to implement the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement upon WTO accession; (3) modestly improved IPR enforcement; (4) joined the five international IPR conventions as required under the 2001 U.S.-Vietnam Bilateral Trade Agreement (BTA); (5) maintained a high-level public commitment to IPR protection; and (6) cooperated closely on this issue with international donors, including the USAID-funded Support for Trade Acceleration (STAR) project. Because of these positive developments, we do not recommend changing Vietnam's current status from Watch List to the Priority Watch List.

13. (SBU) Still, despite this recent progress, many of the problems identified in the 2006 Special 301 Review remain. IPR enforcement in Vietnam remains weak and violations are rampant. Piracy and counterfeiting are particular concerns, with estimated music and software piracy rates at or above 90 percent. IPR infringement is also a problem in the pay TV sector, where a state-owned cable provider is the most egregious violator. Market access barriers, especially censorship of "cultural products," continue to limit the availability of legitimate products, further complicating efforts to combat piracy. Public awareness of intellectual property issues, while growing, remains very low. Routine and reliable enforcement of Vietnam's IPR commitments is still lacking. From the police to the courts, officials in Vietnam's enforcement system, especially at the local level, are poorly informed about the rights of IPR holders or how to prosecute, adjudicate and enforce those rights. With additional resources and more time to implement its newly-passed legislative framework, however, we expect that Vietnam will develop a more consistent track record of IPR enforcement. Until that time, we do not recommend removal of Vietnam from the Watch List.

14. (SBU) The Mission has reviewed industry and public comments submitted as part of the Special 301 review process. Many of the issues raised throughout these submissions provide a broadly accurate portrayal of Vietnam's IPR situation. The GVN is aware of most, if not all, of these concerns. The Mission will continue to raise these issues in discussions with GVN officials, and we hope consistent pressure to resolve these matters will continue to improve the intellectual property rights environment.

#### Optical Media and Book Piracy

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15. (U) Despite improvements in Vietnam's legal regime and a growing understanding of optical media and book piracy among enforcement

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agents, the GVN has made little progress on reducing the amount of counterfeit and pirated goods available in Vietnam. Hanoi, Ho Chi Minh City and most other major cities in Vietnam are rife with music CD, VCD, DVD and video shops. Virtually 100 percent of U.S. and foreign products (and most domestic products) for sale or for rent are pirated. Even where legitimate media products and books are available, they are typically three to five times more expensive than pirated versions, which are sold throughout the major cities, mostly at retail outlets. While most pirated discs are still manufactured in other countries, locally-produced pirated CDs, VCDs and DVDs are becoming more prevalent.

16. (SBU) IPR infringements continue to be a problem in the state-owned TV sector for both foreign and domestic content providers, though there appears to be some progress toward regularizing this market. The most egregious violator is the Vietnam Television Technology Investment and Development Company (VTC), a digital-terrestrial broadcaster operated by the Ministry of Posts and Telecommunications (MPT). VTC illegally broadcasts overspill satellite signals to end-users for a one-time decoder box purchase fee. MPT officials have called the service "experimental" and acknowledge the need to transition to a licensed, fee-based system, but it remains unclear how or when they plan to do so. Despite repeated urging by both the Mission and U.S. industry, MPT has taken no serious steps to end VTC's distribution of stolen signals. Vietnam committed to implement "appropriate legal instruments mandating that all cable television purveyors provide only fully licensed products to their customers," by the time of its WTO accession. Recent conversations with MPT officials confirmed that the GVN has not yet issued any such regulation.

17. (SBU) VTC has defended its practices by claiming it is difficult for them to determine the legitimate right holder. Many channels, however, including HBO, CNN and Discovery, have become legitimately available through local distributors, and other Vietnamese cable companies have successfully acquired proper licensing. In October, VTC illegally broadcast the Miss World Competition, to which the state-owned cable operator, VCTV, held the rights. After VTC ignored calls to cease and desist the broadcast, VCTV led a vocal public campaign to seek remuneration for damages. Although VTC had

to pay a fine for its illegal broadcast which provided monetary compensation to VCTV, the case has done nothing to change the VTC's activities. One positive outcome of this case, however, is the increased public attention to the problem of signal piracy.

#### Software Piracy

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¶8. (SBU) Software industry representatives estimate that piracy rates in Vietnam range between 85 and 92 percent. American software companies such as Microsoft have cooperated with enforcement authorities to take action to reduce the incidence of software piracy, particularly among corporate and government end-users. In 2006, these efforts began to bear fruit as government ministries (Ministry of Finance and General Department of Statistics), SOEs (Bao Viet Finance and Vietnam Mobile Telecom Services Company), state-owned banks (Bank for Foreign Trade of Vietnam) and the Bank for Investment and Development of Vietnam) and private enterprises (FPT Telecom) all signed licensing contracts for Microsoft software covering tens of thousands of computers.

¶9. (U) In July 2006, the Prime Minister issued Decision No. 169/2006/QĐ-TTg, which requires that government agencies strictly comply with laws on copyright protection when procuring and/or using IT products, especially software and digital contents. Also in July, the National Assembly passed the Information Technology Law. Article 12 of the law prohibits IP infringements in IT activities in both the public and private sectors.

¶10. (U) Vietnamese authorities also conducted several highly-publicized raids against software piracy. While few in number, they represent an important first step. In October, inspectors and economic police raided Daewoo's Vietnam subsidiary near Hanoi. The total value of pirated software found on the computers was more than USD 60,000. In a second raid, authorities in Ho Chi Minh City raided a ceramics company in December, netting more than USD 90,000 of illegal software found on confiscated computers.

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#### WTO and BTA Compliance - Implementation Still Weak

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¶11. (U) Chapter Two of the BTA, which entered into force on December 10, 2001, codified Vietnam's commitment to bring its IPR legal regime and enforcement practices up to international standards, to protect intellectual property consistent with WTO TRIPS standards, and in some cases, to provide protection stronger than TRIPS. The BTA covers the fields of copyright and related rights, encrypted satellite signals, trademarks (including well-known marks), patents, layout designs of integrated circuits, trade secrets, industrial designs and plant varieties. Vietnam also agreed to implement the WTO TRIPS agreement immediately upon its WTO accession, which occurred January 11, 2007.

¶12. (U) Under the BTA, Vietnam committed to put into effect the provisions of five international intellectual property conventions and to accede to them "promptly." By joining the International Union for the Protection of New Varieties of Plants (UPOV) and the Brussels Convention Relating to the Distribution of Program-Carrying Signal Transmitted by Satellite in 2006, Vietnam has fulfilled its obligation to accede to all five conventions. (Note: Vietnam previously joined the Paris Convention, Geneva Convention, and Berne Convention. End Note.)

¶13. (U) The BTA obligates Vietnam to provide expeditious remedies to prevent and deter infringement, to allow prompt and effective provisional measures and to put in place criminal procedures and penalties for willful trademark counterfeiting or infringement of copyrights or related rights on a commercial scale. While Vietnam has passed regulations to meet many of these commitments, some legal documents remain outstanding and/or are not yet detailed enough to implement in practice (see paras. 16-20). One notable example is a circular which provides for criminal penalties for copyright infringements on a commercial scale. This circular will serve as a

stop-gap measure until the GVN can complete required revisions to make its Criminal Code consistent with the new IP Law and Vietnam's TRIPS commitments. The USG has consistently pushed for passage of this important circular, and the STAR project has advised the Supreme People's Court (SPC) drafters. SPC contacts report that the circular will be completed by the end of March 2007.

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